
IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1938.

No.

THE OIL STATES and HALLIBURTON OIL WELL
SERVICES COMPANY, corporations,
Petitioners.

THE OIL COMPANY, INC., a corporation, and
THE JOHNSON OIL FIELD SERVICE CORPORATION,
a corporation.

Respondents.

CROSS PETITION FOR A WRIT OF CER-
TIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT AND BRIEF IN SUPPORT
THEREOF.

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IN THE
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OF THE
UNITED STATES.

OCTOBER TERM 1938.

No.

ERLE P. HALLIBURTON and HALLIBURTON OIL WELL
CEMENTING COMPANY (a corporation),

Petitioners,

vs.

HONOLULU OIL CORPORATION, LTD. (a corporation), and
M. O. JOHNSTON OIL FIELD SERVICE CORPORATION
(a corporation),

Respondents.

CROSS-PETITION FOR A WRIT OF CER-
TIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

*To the Honorable Charles Evans Hughes, Chief Justice,
and to the Associate Justices of the Supreme Court
of the United States:*

Petitioners, Erle P. Halliburton and Halliburton Oil
Well Cementing Company, respectfully pray that a writ of
certiorari issue to review a decree of the United States
Circuit Court of Appeals for the Ninth Circuit, entered
July 11, 1938 (petition for rehearing denied September

12, 1938), in a suit (No. 8653) brought by them against respondents, Honolulu Oil Corporation, Ltd., and M. O. Johnston Oil Field Service Corporation, for infringement of Letters Patent of the United States No. 1,930,987. The defendants in said suit, Honolulu Oil Corporation, Ltd., and M. O. Johnston Oil Field Service Corporation, have petitioned this Court (No. , October Term, 1938) for a writ of certiorari to review this identical decree, and the required transcript of record in the case, in two volumes, has been filed in this Court by them. [Opinion, Tr. Vol. I, p. 744; decree, p. 759; order denying petition for rehearing, p. 760.] This is in the nature of a cross-petition for certiorari, to enable petitioners to raise before this Court certain specified questions, which respondents do not seek to raise by their petition.

Statement and Reasons Relied Upon for Allowance of the Writ.

There is a direct conflict between the decisions of two circuit courts of appeal with respect to the validity and scope of the patent in suit. As pointed out in the petition filed on behalf of the respondents, the patent contains (a) method claims and (b) apparatus claims. There is a diversity of opinion below both as to the method and apparatus claims.

In *Johnston Formation Testing Corporation v. Halliburton* the District Court for the Northern District of Texas held both the method and apparatus claims valid and infringed [Tr. Vol. II, p. 215], whereas the Circuit Court of Appeals for the Fifth Circuit held the method claims invalid and the apparatus claims valid but not infringed (88 Fed. (2d) 270).

In the present case, *Halliburton v. Honolulu Oil Corporation, Ltd.*, and *M. O. Johnston Oil Field Service Corporation*, the District Court held both the method and apparatus claims invalid and not infringed [Tr. Vol. I, p. 43], but the Circuit Court of Appeals for the Ninth Circuit, reversing the District Court as to the method claims, has held the method claims valid and infringed. As to the apparatus claims, the Circuit Court of Appeals affirmed the District Court, holding the apparatus claims invalid (98 Fed. (2d) 436).

The accused method and device involved in both cases are identical.

The questions specified for review in the petition for writ of certiorari filed by respondents, *Honolulu Oil Corporation, Ltd.*, and *M. O. Johnston Oil Field Service Corporation*, go only to the validity of the method claims of the patent in suit. Petitioners, by this petition, ask this Court to review also the validity and infringement of the apparatus claims.

Petitioners join with respondents in urging that this is a case entitled to review by this Court under subdivision 5 (a) of Rule 38.*

Petitioners sought a review by this Court of the decision of the Fifth Circuit Court of Appeals, but this was denied at a time prior to the conflicting decision of the Ninth Circuit Court of Appeals. (301 U. S. 691, 15 Sup. Ct. 793.)

*The right to file any other or further brief in opposition to defendants' petition for certiorari is hereby waived.

Questions Presented.

Petitioners, by this cross-petition, seek a review of the following questions:

(1) Are apparatus claims 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19 of United States Letters Patent No. 1,930,987, valid?

(2) Are such apparatus claims infringed by the accused device employed by the defendants, Honolulu Oil Corporation, Ltd., and M. O. Johnston Oil Field Service Corporation?

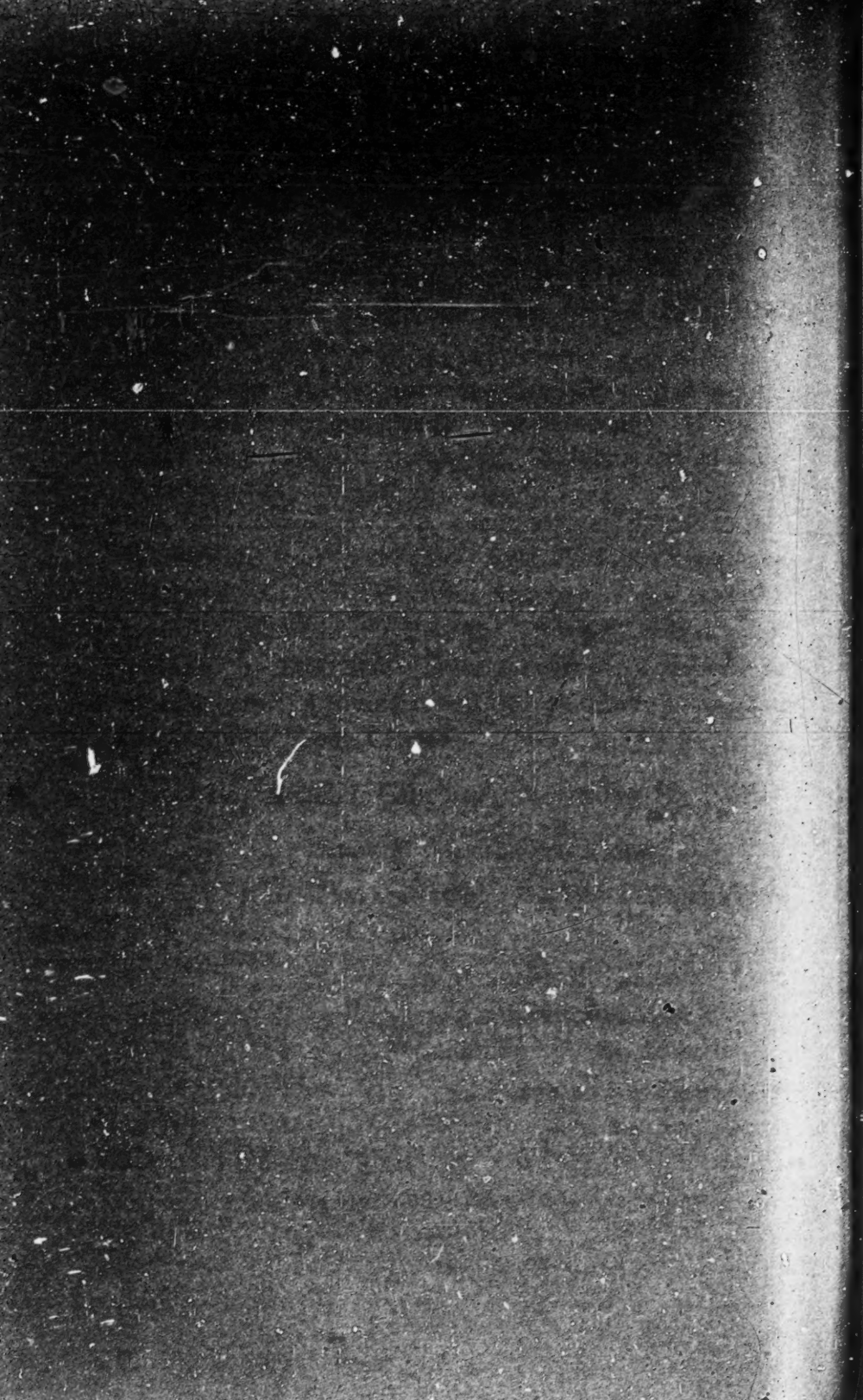
Wherefore, your petitioners, Erle P. Halliburton and Halliburton Oil Well Cementing Company, pray that this petition be granted, and that the aforesaid questions be determined by this Court upon the grant of a writ of certiorari to be issued and directed to the Circuit Court of Appeals for the Ninth Circuit.

Dated Los Angeles, California, November 12, 1938.

ERLE P. HALLIBURTON and
HALLIBURTON OIL WELL CEMENTING
COMPANY,

By FREDERICK S. LYON,
LEONARD S. LYON,
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Attorneys for Petitioners.

WILLIAM H. DAVIS,
Of Counsel.



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HONOLULU OIL CORPORATION, LTD. (a corporation), and
M. O. JOHNSTON OIL FIELD SERVICE CORPORATION
(a corporation),

Respondents.

BRIEF IN SUPPORT OF CROSS-PETITION.

I.

Opinions in the Courts Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported as *Halliburton v. Honolulu Oil Corporation et al.* in 98 Fed. (2d) 436 [Tr. Vol. I, p. 744], and the opinion of the District Court in the same case is reported in 18 Fed. Supp. 58. The opinion of the Circuit Court of Appeals for the Fifth Circuit is reported as *Johnston Formation Testing Corporation et al. v. Halliburton* in 88 Fed. (2d) 270, and the decree of the District Court in that case will be found at Vol. II, p. 215, of the transcript here.

II.

Jurisdiction of This Court.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (28 U. S. C. A. 347). The date of the decree sought to be reviewed is July 11, 1938, but the petition for rehearing was not denied until September 13, 1938.

III.

Argument.

As pointed out in the statement of facts set forth in the petition, the Court of Appeals for the Ninth Circuit has in the instant case rendered a decision in direct conflict with the decision of the Court of Appeals for the Fifth Circuit, not only upon the matter of the validity of the method claims of the patent in suit, but upon the matter of the validity and scope of the apparatus claims as well.

It is clear, we think, that the conflict of decisions with respect to the validity of the method claims, brought to the Court's attention on defendants' behalf, calls for the granting of a writ of certiorari.

We think it is equally clear that the conflict with respect to the validity and scope of the apparatus claims should also be resolved by this Court. (Rule 38, paragraph 5, of the Rules of this Court.)

Respectfully submitted.

FREDERICK S. LYON.

LEONARD S. LYON.

HENRY S. RICHMOND.

Attorneys for Petitioners.

WILLIAM H. DAVIS,

Of Counsel.

